IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 839 of 2001
(Old No. 2530 of 1987)

Lalit Singh ……Appellant

Vs.

State of U.P. ……Respondent

Shri B.S. Adhikari, learned counsel for the appellant.
Shri Sohail Siddhiquie, learned A.G.A. for the State.

Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.), is directed against the judgment and order dated 16.10.1987, passed in Sessions Trial No. 22 of 1987, whereby accused/appellant Lalit Singh has been convicted under Section 306 of Indian Penal Code, 1860 (for brevity herein after referred as I.P.C.) and sentenced to rigorous imprisonment for a period of one year.

2. Heard learned counsel for the parties and perused the record.

3. Prosecution story in brief, is that Smt. Babli Devi (deceased) used to live in village Kamrara, District Pauri in her father-in law's house and every time when she went to her parents house, she

complained that the relatives in her husband's house are harassing her. On 03.05.1987, at about 10:00 P.M. – 11:00 P.M., Babli Devi was weeping and complaining to Nandan Singh (P.W. 2) that accused Lalit Singh is hurling abuses at her. She told that Lalit Singh (brother-in-law of the deceased) is not allowing her to sleep in the house. On this, P.W. 2 Nandan Singh went to the house of Dheeraj Singh (brother of P.W. 2) and saw that accused Lalit Singh (brother of husband of the deceased) is hurling abuses at Babli Devi. He asked Lalit Singh to permit Smt. Babli Devi to live in the house and asked her to sleep. However, after he came back, at about 1:00-1:30 P.M. in the midnight, Bishan Singh (brother of the accused Lalit Singh) awakened him and told him that Babli Devi has set herself on fire. On this, he along with Bishan Singh went to the house of Dhiraj Singh and saw that the deceased was lying in a burnt condition. A doctor was sent for but could not be found and meanwhile deceased succumbed to the injuries at about 4:00 A.M. Village Pradhan P.W. 1 Pratap Singh was informed about the incident, who gave First Information Report (Ext. A-1) on 04.05.1987 at 6:30 A.M. to the Patwari Kauriya (In Uttarakhand hills certain revenue officials are given police powers). The Supervisory Kanoongo of the area made endorsement on said report on 05.05.1987 and directed the Patwari Kauriya to investigate the crime. A check report (Ext. A-6) was got prepared. The

Investigating Officer took the dead body into his possession, prepared the inquest report (Ext. A-9), sketch of the dead body (Ext. A-10), letter (Ext.A-11) to Chief Medical Officer, requesting him for post mortem examination, and sent the dead body for autopsy. The post mortem examination on the dead body of the deceased was conducted on 06.05.1987 at about 3:00 P.M. by Dr. K.N. Joshi. The Investigating Officer after interrogating the witnesses and preparing the site plan, submitted the charge sheet (Ext. A-13) against accused Lalit Singh for his trial for allegedly committing murder of Babli Devi.

4. The Magistrate on receipt of the charge sheet appears to have committed the case to the Court of Sessions after giving necessary copies to the accused, as required under Section 207 Cr.P.C. The trial court after hearing the prosecution under sections 302 and 304 B I.P.C. against the accused Lalit Singh, who pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Pratap Singh, P.W. 2 Nandan Singh, P.W. 3 Prithwi Singh Rawat, P.W. 4 Ram Kishan (Investigating Officer) and P.W.5 Kalam Singh (Supervisory Kanoongo). Oral and documentary evidence were put to the accused person under section 313 for Cr.P.C. in reply to which he alleged the same to be false. Learned trial court found that charge of offence punishable under Section

302, 304-B I.P.C. are not made out. However, the trial court found that charge of offence punishable under Section 306 I.P.C. is proved against accused Lalit Singh. Accordingly, he was convicted and after hearing on sentence, learned Sessions Judge sentenced him to rigorous imprisonment for a period of one year. Aggrieved by said judgment and order dated 16.10.1987, accused preferred this appeal before Allahabad High Court from where it has been received by transfer to this Court under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

5. Before further discussions, it is pertinent to mention here the ante mortem injuries found on the person of deceased which are narrated in autopsy report (Ext. A-2), as under:-

Extensive superficial to deep burn of face, front and back of the neck, front and back of both the upper limbs. Front and back of chest. Front and back of both lower limbs, except one. Line of redness present adjoining to the burn area. Skin peeled off at various places. Singeing of hairs, eyebrows and blackening of skin present.

Cause of death according to Medical Officer was shock due to extensive burn.

6. P.W. 1 Pratap Singh is Village Pradhan, who lodged First Information Report (Ext. A-1). This witness is not the eye-witness of the incident. He has simply stated that on receiving information in the morning on 04.05.1987, he prepared First Information Report at about 6:30 A.M. and submitted the same to the Revenue Officials.

7. P.W. 2 Nandan Singh is the most important witness produced on behalf of the prosecution. This witness is uncle of the accused/appellant and lives in the same village where the incident has taken place. This witness has stated that Dheeraj Singh is his brother and Lalit Singh is his nephew. This witness has further stated that Babli Devi (deceased) was wife of Thakur Singh (brother of Lalit Singh). While narrating the prosecution story, this witness stated that on 03.05.1987 at about 10:00-11:00 P.M. Babli Devi came to him and complained that Lalit Singh is hurling abuses at her and not permitting her to sleep in the house. P.W. 2 Nandan Singh states that he took Babli Devi to her in-laws house and asked Lalit Singh not to harass the deceased. However, Lalit Singh continued to hurl abuses at Babli Devi. The witness states that he made the deceased to enter in the house and asked her to sleep. At about 1:00-1:30 A.M. Bishan Singh made him wake up and told that Babli Devi has set herself on fire. When he (Nandan Singh) Went to the house of Dhiraj Singh, he saw Babli Devi

lying unconscious with burn injuries. P.W. 2 Nandan Singh says that attempt was made to call the doctor but he was not available and Babli Devi succumbed to the injuries at about 4:00 A.M. in the morning.

8. P.W. 3 Prithwi Singh Rawat is father of the deceased, who has corroborated the fact that his daughter (Babli Devi) used to complain to him whenever she came to her parental house that she is being harassed by her in-laws.

9. P.W. 4 Ram Kishan is the Investigating Officer prepared the panchayatnama (Ext. A-9) and interrogated the witnesses before submitting the charge sheet (Ext. A-13). P.W. 5 Kalam Singh is Supervisory Kanoongo, who directed the investigation to be made by patwari. From the evidence on record, it is established that Babli Devi died a homicidal death in the house of her husband in the village. It is established on the record that the husband of the deceased was not living in the village. In the circumstances, testimony of P.W. 2 Nandan Singh who is uncle of accused/appellant is natural and trustworthy. He was not only the relative of the accused and the deceased but also their neighbour. Though the charge sheet was filed by the Patwari relating to Section 302 I.P.C. but the witness has not supported or exaggerated the story except what he has seen. It has not been established on the record that if

the deceased was harassed for non fulfillment of demand of dowry or cruelty was committed due to that reason. Also, there is no evidence that commission of murder was committed by accused Lalit Singh witnessed by anyone. As such, the trial court has rightly found that the prosecution has failed to prove the charge of offence punishable under Sections 302 and 304 I.P.C. Having heard learned counsel for the parties and after going through the record, this Court is in agreement with the trail court that the facts and circumstances, which are proved on record, establish that accused/appellant Lalit Singh has committed abetment of suicide. Considering the homicidal death of the deceased read with the circumstances in which she committed suicide, as narrated by P.W. 2 Nandan Singh, the charge of offence punishable under Section 306 I.P.C. is clearly made out against accused/appellant Lalit Singh.

10. However, as far as the sentence is concerned, the learned counsel for the appellant drew attention of this Court to the fact that appellant has already undergone almost six months in jail during the trial. It is not a case of demand of dowry or harassment for non-fulfillment of dowry. A letter (Ext. A-4) dated 22.05.1986, written by husband of the deceased to his father-in-law indicates that when father-in-law of the deceased went to the village of father of the deceased, he was not properly attended by the parents of the

deceased, which appears to have caused annoyance between the two families. The conduct of the accused/appellant hurling abuses at his 'BHABHI' (elder brother's wife), appears to be the consequence of the above annoyance. Considering these facts and circumstances, and keeping in view the young age of the accused/appellant at the time of the incident, this Court is of the view that sentence of imprisonment already underwent by the appellant would meet the ends of justice and no useful purpose would be served by sending him to jail again. Therefore, the appeal is partly allowed. Conviction of the appellant recorded by the trial court is upheld. However, sentence awarded to him is reduced to the period already undergone. Accused/appellant is on bail. He need not to surrender. His bail bonds are cancelled and sureties discharged.

(Prafulla C. Pant, J.)

Dt: 06.03.2007
Sweta